

The Nexus between Old and New Minorities

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In international law, minority rights instruments have been traditionally conceived for, and applied to, old minority groups with the exclusion of new minority groups originating from migration. This blog argues that the extension of the scope of application of legal instruments of minority protection, such as the Framework Convention for the Protection of National Minorities (FCNM), is conceptually meaningful and beneficial to the integration of new minorities stemming from migration.



Old and New Minorities: Still a Valid Dichotomy?

The terms *historical*, *traditional*, *autochthonous minorities* – the ‘*old minorities*’ – refer to communities whose members have a distinct language, culture, or religion as compared to the rest of the population. They have often become minorities through the redrawing of international borders, having seen the sovereignty of the territories where they live shift from one country to another. Among these communities there are also ethnic groups that, for various reasons, have not achieved statehood of their own, and have now become part of a larger country (or several countries). These are the so-called ‘old minorities’ or ‘sub-state nations’. In many, but not all cases, their co-ethnics may be numerically or politically dominant in another state, which they therefore regard as their ‘external national homeland’ or kin-state.

‘*New minorities*’ are groups formed by individuals and families who have left their original homeland to emigrate to another country generally for economic and, sometimes, political reasons. New minorities thus consist of migrants and refugees and their descendants who are living, on a more than merely transitional basis, in another country than that of their origin.

The differences among minority groups, old and new alike, may be profound or difficult to discern. However, what distinguishes all minority groups is that they manifest, albeit implicitly, a desire to maintain an individual and collective sense of identity, which differs from a dominant culture. Culture in this context is not synonymous with particular practices, customs or manners of dress. It is a sense of individual and communal self-identity that pervades multifarious aspects of life, including work and economic activity.

The claims of old and new minorities are often perceived as a challenge and antagonistic to the traditional model of homogeneous ‘nation-states’ because both groups seek to increase opportunities within this model to express their identities and diversities at individual and group level. Along these lines, old and new minorities are often perceived as foreigners in

the state where they live. Accordingly, old and new minorities are seen as loyal to their kin-state or to the original state whose citizens they are and to whose sovereign they belong, as long as they are not absorbed into the national body through assimilation.

Common Claims and Common Rationale for Protection

In addition to sharing some common characteristics, old and new minorities voice similar claims, namely the right to existence, the right to equal treatment and non-discrimination, the right to identity and diversity, and the right to the effective participation in cultural, social and economic life and in public affairs. Related to these common claims, there is also a common rationale for protecting old and new minorities, namely that minority protection is necessary to maintain and promote peace and security, protect human rights and cultural diversity, and also ensure democratic participation and democratic pluralism.

Despite these commonalities major legal instruments of minority protection, such as the Framework Convention for the Protection of National Minorities (FCNM), have been traditionally conceived for, and applied to, old minorities with the exclusion of new minorities originating from migration.

International Minority Rights Standards

Within the minority rights catalogue, however, only some provisions are limited to old minorities. This is not a matter of interpretation. It is clearly expressed in the international instruments. For instance, the most relevant legal instrument of minority protection in Europe, the Framework Convention for the Protection of National Minorities, contains only three articles that condition their entitlements on 'traditional' ties. **These** provisions pertain to the use of the minority language in public administration and on public signs and also in relation to education in the mother tongue (Art. 10 (2), Art.11 (3), and Art. 14 (2) of the FCNM); all other entitlements such as those to equality, non-assimilation, development of identity, tolerance, effective participation, bilateral and multilateral relations relate to all individuals and groups who may be in the position of a minority, thus old and new minorities alike, groups officially recognised as national minorities and those not recognised, individuals with or without the citizenship of the country in which they live.

Common but Differentiated Set of Rights

The conviction that minority groups, regardless of being old or new, have some basic common claims and that the rationale for protecting them is fundamentally the same, does not mean that all minority groups have all the same rights and legitimate claims. Some have only minimum rights, while others have, or should be granted, more substantial rights; some can legitimately put forward certain claims – not enforceable rights – that have to be negotiated with the majority, while others cannot. For instance, the members of any minority have the right to use their own language, in private and in public, with anyone who is prepared to communicate with them in that language, but not all minorities, or not all their members, have a legitimate claim to receive state-funded education in their own language, or to use their own language in communicating with public officials.

In this context, the difference is not (only) based on the fact that a given group belongs to the category of an old or new minority. Other factors are relevant and apply without

distinction to old and new minorities alike, such as socio-economic, political and historical factors, the legacy of past colonization or forms of discrimination; whether members of a minority live compactly together in a part of a state territory, are dispersed or live in scattered clusters; or whether members of a community with distinctive characteristics have long been established on the territory, while others have only recently arrived. Minority groups, both old and new, are not indistinctive monolithic, but rather are composed of groups very different from one another. The catalogue of minority rights has so far been implemented in relation to historical minorities without differentiating among various minority groups, but by taking into account other more pragmatic factors, such as those mentioned above. The same approach should be applied when extending minority protection to new minority groups stemming from migration.

Beyond the Old/New Minority Dichotomy

In conclusion, it is important to recognize that any decision to bring minorities of immigrant origin within the scope of application of international and/or national instruments pertaining to minorities is bound to be political. But if a country is serious about integrating immigrants, then it should not oppose the extension of the scope of application of minority provisions to new minorities. This would not entail the extension of the full range of minority protection to all minority groups without distinction. Moreover, it could be an appropriate political gesture that would underline the importance of the country's integration policy and sends out a powerful message that populations of immigrant origin are clearly seen to be an integral, though distinct, part of the nation.

This blog draws upon previously published works, in particular, Roberta Medda-Windischer, Old and New Minorities. Reconciling Diversity and Cohesion (Nomos Publisher, Baden-Baden, 2009); Roberta Medda-Windischer, "Changing Paradigms in the Traditional Dichotomy of Old and New Minorities", in Kristin Henrard (ed.), Double Standards Pertaining to Minority Protection (Martinus Nijhoff Publishers, Leiden, 2010); Roberta Medda-Windischer, "New Minorities, Old Instruments? Diversity Governance from the Perspective of Minority Rights", 13(2) Migration Letters (Special Issue) (2016); Roberta Medda-Windischer, Integration of New and Old Minorities: Beyond a Janus-faced Perspective, 14 European Yearbook of Minority Issues (2017).